87 - 2061

No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1988

DOROTHY COLLINS, *et al.*,
Petitioners

vs.

PATRICIA K. BARRY,
Director of the Ohio Department of
Human Services,
Respondent

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A permanent injunction was issued by a federal court in a statewide class action. The injunction was, in all respects, valid and lawful. It became final. Subsequently, there was a change in a federal statute upon which the injunction was based. Thereupon, the enjoined party began to violate the injunction without first initiating judicial proceedings to obtain relief from it.

The question presented is: Does a lawfully issued final permanent injunction remain enforceable in compensatory civil contempt proceedings until such time as it is prospectively vacated in judicial proceedings, notwithstanding a post-judgment change in a statute upon which the injunction was based?

LIST OF PARTIES

The parties to the civil contempt proceedings below are petitioners, members of a certified class originally represented by named-plaintiff Dorothy Collins, and respondent Patricia K. Barry, Director of the Ohio Department of Human Services. Respondent Barry is the successor in public office to Denver L. White, an original defendant named in the underlying action.

Those not named as parties in this Court are Steven Minter, Linda Elam, and Otis Bowen. Mr. Minter was the Director of the Cuyahoga County (Ohio) Welfare Department and was the other original defendant in the underlying action. He has since been succeeded in public office. His successor was not the subject of and did not participate in the civil contempt proceedings below. Ms.

Elam and Mr. Bowen, who is the Secretary of the U.S. Department of Health and Human Services, were adverse parties in a separate, unrelated action in the United States District Court for the Southern District of Ohio. By order of the United States Court of Appeals for the Sixth Circuit, their appeals of the judgment of that court (Appeal Nos. 87-3070/3138/3139) were consolidated for submission with respondent Barry's appeal from the judgment of the United States District Court for the Northern District of Ohio (Appeal No. 86-4024) in the instant case. The question presented to this Court has no bearing on Mr. Minter, Ms. Elam or Secretary Bowen. They have no interest in the outcome of this Petition.

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The petitioners, members of the certified class originally represented by named-plaintiff Dorothy Collins, pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth

Circuit, entered in the above-entitled proceedings on March 21, 1988.

OPINIONS BELOW

The judgment and opinion of the United States Court of Appeals for the Sixth Circuit are reprinted in the Appendix of this Petition (hereafter "A") at A1 and A3, respectively. The opinion of the Court of Appeals is reported at 841 F.2d 1297. The opinion of the Court of Appeals incorporates by reference the court's opinion in Bradley v. Austin, No. 87-5248 (filed March 21, 1988). That opinion, though it does not bear on the question presented in this Petition, is reprinted in the Appendix at A10. It is reported at 841 F.2d 1288.

The opinion of the United States District Court for the Northern District Court of Ohio is reprinted in the

Appendix of this Petition at A26. The opinion of the District Court is reported at 644 F. Supp. 249.

JURISDICTION

The judgment and opinion of the Sixth Circuit were entered on March 21, 1988. The jurisdiction of this Court to review the judgment of the Sixth Circuit by writ of certiorari is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

This case involves civil contempt proceedings brought on May 2, 1986, to enforce a final permanent injunction. The injunction had been issued in the underlying action on January 22, 1971. On September 19, 1986, the District Court, which had issued the injunction, found respondent Barry in civil contempt for violating the terms of the injunction

and awarded compensatory damages to petitioners. The Sixth Circuit reversed, vacated and remanded for the entry of judgment for the respondent. The District Court's jurisdiction over the underlying action had been invoked under 42 U.S.C. §1983.

On January 22, 1971, the District Court certified a class of persons represented by Dorothy Collins, the named-plaintiff, and issued a permanent injunction against respondent Barry's predecessor in public office. 1/ The injunction prohibited the use of an eligibility determination procedure in the administration of the Aid to Families

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1/ The class consists of all Ohio families in which there are both needy children and children receiving OASDI benefits. A12.

with Dependent Children ("AFDC") program, 42 U.S.C. §601, et seq., in Ohio. 2/ (A3-4, 12.) The basis upon which the District Court issued the injunction was the conflict between the state procedure and the federal social security laws. (A 4-5 and 10-11.) In particular the District Court found that the state procedure violated: provisions of the federal Social Security Title II (OASDI) program statute, 42 U.S.C. §§402(d) and 408(e); a provision of the federal AFDC program statute, 42 U.S.C. §602(a)(7); and the AFDC "availability" principle developed by decisional law. (A10-11.) The District Court, however,

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2/ The procedure enjoined was referred to as the "family unit rule."

expressly withheld ruling on petitioners' equal protection claims. (A5.) There was no appeal.

In 1984, the federal AFDC program statute, upon which the District Court had in part based the injunction, was changed. The change was made by the Deficit Reduction Act of 1984 ("1984 DEFRA") which added paragraph (a)(38) to §402 of Title IV of the Social Security Act, 42 U.S.C. §602(a)(38) (Supp. 1987). The statutory change was implemented by a change in the federal AFDC regulations with the addition of 45 C.F.R. §206.10(a)(1) (vii)(B)(1986). The change became effective October 1, 1984.

Following the change in the federal statute and regulations, but without seeking relief from the District Court, respondent Barry began once again to

enforce the AFDC eligibility determination procedure which had been prohibited by the 1971 permanent injunction. 3/ She resumed the enjoined procedure effective October 1, 1984.

On May 2, 1986, petitioners, members of the certified class, moved the District Court to require respondent Barry to show cause why she should not be held in contempt for her violation of the 1971 permanent injunction. Petitioners sought, inter alia, the restoration of AFDC benefits lost to class members as a result of the violation of the injunction. Respondent Barry opposed the motion.

3/ The procedure when it was resumed, was referred to as the "standard filing unit rule."

On June 11, 1986, nearly twenty-one months after she had begun to violate the injunction, respondent Barry moved for relief from the injunction pursuant to Rule 60(b), Fed. R. Civ. P., based upon the change in the federal AFDC statute and regulations made by the 1984 DEFRA. Petitioners opposed the motion.

On September 19, 1986, the District Court issued an order granting petitioners' motion to show cause and denying respondent Barry's motion for relief from the 1971 permanent injunction. The District Court, inter alia, found respondent Barry in contempt for having violated the injunction, notwithstanding the 1984 DEFRA, and ordered her to restore AFDC benefits lost to class members as a result of the violation of the injunction. The

District Court noted that respondent Barry had not "previously sought relief from that [permanent injunction] order, and her enforcement of the standard filing unit rule continues unabated." (Bracketed text added.) (A19.)

On September 30, 1986, respondent Barry filed both a notice of appeal to the Sixth Circuit and a motion to stay enforcement of the order pending appeal. The District Court issued an order granting the stay on October 1, 1986. The stay, inter alia, relieved respondent Barry from the obligation of complying with the 1971 permanent injunction pending appeal.

On March 21, 1988, having stayed its proceedings pending the issuance of a decision in Bowen v. Gilliard, 107 S.Ct. 3008 (1987), the Sixth Circuit issued a

judgment and an opinion reversing and vacating the District Court's order and remanding for the entry of judgment for respondent. With respect to the questions raised by petitioners' motion to show cause, the Sixth Circuit held that the District Court had erred in finding respondent Barry in contempt and in awarding the restoration of the AFDC benefits to class members as a remedy. It determined that respondent Barry had violated the 1971 permanent injunction but that the injunction had been invalidated by the 1984 DEFRA. It further found that petitioners were not entitled to the restoration of lost AFDC benefits because they were not entitled to them under the federal AFDC statute as changed by the 1984 DEFRA.

REASONS FOR GRANTING THE WRIT

I.

This case presents important public policy questions, not yet resolved by this Court, concerning the power of a federal court to enforce a lawfully issued final order in compensatory civil contempt proceedings where there has been a post-judgment change in a statute upon which the order was based.

The power of a federal court to enforce its lawful orders in contempt proceedings is a matter of important public policy. It is a power which is important to the courts and to parties alike. W.R. Grace and Co. v. Local Union 759, 461 U.S. 757 at 766 (1983).

The Sixth Circuit has, in the instant case, substantially and incorrectly restricted that civil contempt power. It has done so by precluding the enforcement of a final unvacated permanent injunction after a post-judgment change in a statute upon which the injunction was based, and

by denying compensatory damages to those whose rights under that injunction were violated. It has thus relegated a lawfully issued order to the status of an unlawfully issued order.

The Sixth Circuit has, by its decision, encouraged enjoined parties to do what this Court has warned against. It has encouraged them to avoid returning to court to seek relief from judgment when a change in law occurs. It has encouraged them, instead, to judge their own cases and to determine for themselves the continuing force of otherwise valid final orders. The Sixth Circuit has also placed on the parties who properly obtained such orders the duty of discovering violations and of initiating proper judicial proceedings to seek to enforce such orders. However, it has denied

those same parties the ability to obtain compensatory damages for violations of their fully adjudicated rights under the valid final orders. Finally, the Sixth Circuit has seriously limited the authority of the issuing courts to determine the effect of the claimed change in law upon their valid final orders and to insist upon obedience to them until then.

The Sixth Circuit's decision has had serious ramifications for petitioners and will have serious ramifications for other parties in other cases. Petitioners have been denied compensatory damages despite the clear violation of their rights under the 1971 permanent injunction. The results will be serious also for other parties likewise protected by fully adjudicated lawfully issued final orders. Their adverse parties also are now

virtually free to violate such orders when a post-judgment change in law occurs (e.g., a change in the statutory, regulatory or decisional law underlying the injunction).

Neither parties ostensibly protected by such orders nor issuing courts can rest assured that orders will be obeyed until prospectively modified or vacated. Neither may rely on their ability to fully enforce such orders since enforcement, under the Sixth Circuit's decision, depends upon the effect of post-judgment changes. Only the more problematic criminal contempt sanctions remain certain in such cases. But while criminal contempt will provide a remedy for the issuing courts in some cases, it will not provide compensation for protected parties.

The question presented herein, and

argued infra, has not been addressed by this Court. However, in other contempt cases, this Court has made its approach to contempt plain. E.g., GTE Sylvania, Inc. v. Consumers Union, Inc., 445 U.S. 375 (1980); Pasadena City Bd. of Ed. v. Spangler, 427 U.S. 424 (1976); Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175 (1968); McComb v. Jacksonville Paper Co., 336 U.S. 187 (1949); and United States v. Swift & Co., 286 U.S. 106 (1932). That approach requires continuing obedience to lawfully issued final orders and permits the award of compensatory damages for violations of such orders. That approach would settle this question and would lead to the reversal of the Sixth Circuit's decision.

It is appropriate that this question be resolved by this Court in this case because petitioners have been erroneously

deprived of their compensatory damages and because the Sixth Circuit has so severely restricted the civil contempt power of a federal court.

II.

A lawfully issued final permanent injunction remains valid and enforceable in civil contempt until it is prospectively vacated in judicial proceedings, notwithstanding a post-judgment change in a statute upon which it was based. The Sixth Circuit erred in its decision to the contrary.

In 1971 the District Court lawfully issued a permanent injunction. The injunction was not appealed and became final. However, in 1984 respondent Barry resumed the practice prohibited by the injunction because of a change in the federal AFDC statute, a statute upon which the injunction was based. Respondent Barry did not initiate proceedings to vacate the injunction until 1986, after petitioners had filed

their motion to show cause. 4/ The District Court granted petitioners' motion. But the Sixth Circuit reversed.

The principles governing civil contempt, and the doctrines of res judicata and stare decisis, make it plain that the rationale upon which the Sixth Circuit

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4/ The legal effect of the change in law was far from clear when respondent filed her motion for relief from judgment. A number of courts had already ruled that the 1984 DEFRA had not changed the law as it related to the prohibited AFDC eligibility determination procedure; a number of other courts had ruled otherwise. Compare Frazier v. Pingree, 612 F. Supp. 345 (M.D. Fla. 1985); Gorrie v. Heckler, 624 F. Supp. 85 (D. Minn. 1985); White Horse v. Heckler, 627 F. Supp. 848 (D.S.D. 85); Gibson v. Sallee, 648 F. Supp. 54 M.D. Tenn. 1986) with Oliver v. Ledbetter, 624 F. Supp. 325 (N.D. Ga. 1985); Creaton v. Heckler, 625 F. Supp. 26 (C.D. Cal. 1985); Ardister v. Mansour, 627 F. Supp. 641 (W.D. Mich. 1986); Shonkwiler v. Heckler, 628 F. Supp. 1013 (S.D. Ind. 1985); Sherrod Hegstrom, 629 F. Supp. 150 (D. Ore. 1985). (The subsequent history of these cases is set forth in the Table of Authorities, supra.)

based its reversal is unsupported and unsupportable. The Sixth Circuit's rationale is that an otherwise valid injunction becomes invalid by operation of law when there is a post-judgment change in the law upon which the injunction was based. Under the Sixth Circuit's rationale the injunction becomes instantly invalid and unenforceable by virtue of such a change, and the enjoined party becomes free to violate to the injunction without need of any judicial proceedings.

The Sixth Circuit's rationale encroaches upon the general contempt rule, fully applicable here, that an enjoined party is obliged to obey a final injunction issued by a court with subject matter and personal jurisdiction unless and until the injunction is modified or vacated in orderly judicial proceedings.

W.R. Grace, 461 U.S. at 766; GTE Sylvania, 445 U.S. at 386; Pasadena, 427 U.S. at 438-440; Maness v. Meyers, 419 U.S. 449, 458-459 (1975); Carroll, 393 U.S. at 179; Walker v. City of Birmingham, 388 U.S. 307, 314-321 (1967); McComb, 336 U.S. at 192; Howat v. State of Kansas, 258 U.S. 181, 189-190 (1922); Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 436-439, 450-451 (1911).

Under the general rule, enjoined parties are warned against judging for themselves whether such an injunction should be continued, despite their serious questions about whether it should (e.g., because of questions raised by post-judgment changes in statutory or decisional law). Enjoined parties are required to utilize orderly judicial proceedings to seek and obtain

appropriate relief. They are on notice that disobedience of a lawfully issued final injunction is contempt and will subject them to serious sanctions. There are sound reasons for this. Respect for the judicial power demands obedience to lawful orders and the adjudicated rights of the adverse party require protection.

The Sixth Circuit's rationale also incorrectly applies the narrow civil contempt exception. This exception makes unenforceable an order which was invalidly issued. An invalidly issued order is one which was issued by a court without jurisdiction (subject matter or personal) or one which was erroneously issued in the first place. In such circumstances, the right to remedial civil contempt relief falls with the invalid order. United States v. United

Mine Workers of America, 330 U.S. 258, 295 (1947); Worden v. Searls, 121 U.S. 14, 25-26 (1887).

This narrow exception applies in circumstances far different from those here. It applies in circumstances in which the party obtaining the order was not entitled to it in the first place because of such a defect. But it has not been applied in a case such as this in which the injunction was correctly issued by a court with both subject matter and personal jurisdiction and which was final long before it was violated. It is plain that this exception should not apply in such a case. E.g., W.R. Grace, 461 U.S. at 766; GTE Sylvania, 445 U.S. at 386; Pasadena, 427 U.S. at 438-440; Carroll, 393 U.S. at 179, McComb, 336 U.S. at 192. The Sixth Circuit, however, has now

applied this narrow exception to defeat a validly issued permanent injunction. It has, in effect, widened this exception.

The Sixth Circuit's rationale also undermines the doctrines of res judicata and stare decisis because it fails to give finality to a fully adjudicated, lawfully issued, final order. Under these doctrines, such an order is final subject to prospective modification or vacation. But, unless and until it is, such an order has finally adjudicated and fixed the rights of the parties to it. Pasadena, 427 U.S. at 432; System Federation No. 91, Railway Employees' Dept. v. Wright, 364 U.S. 642, 647-648 (1961); Maggio v. Zeitz, 333 U.S. 56, 68-69, 74-75 (1948); United Mine Workers, 330 U.S. at 259; Oriel v. Russell, 278 U.S. 358 (1929). Such an order is not

subject to what could amount to a collateral attack in the context of civil contempt proceedings. Civil contempt proceedings do not and should not be used as an occasion to reconsider the legal basis of the order which is said to have been disobeyed. A court's power to enjoin should not be treated as so inconclusive that rights fixed by the order remain the subject of continuing dispute. These well-settled principles of res judicata and stare decisis are ignored by the Sixth Circuit's rationale which, in effect, treats an otherwise final injunction as interlocutory in post-judgment civil contempt proceedings.

The principles governing the prospective modification of otherwise final orders do not justify the Sixth Circuit's determination. Res judicata

and stare decisis give finality, but not immutability, to a lawfully issued, final order. Balanced with those doctrines is the authority of the court to prospectively modify or vacate its injunction based upon changed circumstances (e.g., changes in statutory, regulatory or decisional law). Pasadena, 427 U.S. at 437-438; System Federation, 364 U.S. at 647-648; Swift, 286 U.S. at 114-115; Pennsylvania v. Wheeling and Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855). But post-judgment changes do not by themselves relieve an enjoined party from its obligation to continue to obey a lawfully issued final injunction. Only the courts may grant relief from judgment. This is so despite any legitimate questions the enjoined party may have about whether the injunction

should be continued.

The proper means by which to question the continuing vitality of an order is by judicial proceedings to modify or vacate it; not by privately determining the law and relieving oneself from the order. The latter course makes light of the judicial power and has been condemned unequivocally. E.g., Pasadena, 427 U.S. at 438-440; Carroll, 393 U.S. at 179; Walker, 388 U.S. at 315; Maggio, 333 U.S. at 58; McComb, 336 U.S. at 192; United Mine Workers, 330 U.S. at 290; Howat, 258 U.S. at 189-190; Gompers, 221 U.S. at 436-439, 450-451. Post-judgment proceedings, though, do not bring into question the past validity of a lawfully issued final injunction, nor do they present the opportunity to reverse it under the guise of adjusting it. Maggio,

333 U.S. at 68-69; United Mine Workers, 330 U.S. at 259; Oriel, 278 U.S. 358. The Sixth Circuit has treated the continuing authority of the court to prospectively change its injunction as merely an alternative to the exercise of self-help by the respondent. That is not correct.

Nor is the Sixth Circuit's decision supported by the precedents upon which it relies.5/ Those precedents support only the narrow civil contempt exception, discussed supra, which bars the enforcement of invalidly issued orders. The

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5/ The precedents relied upon by the Sixth Circuit are: United States v. Campbell, 761 F.2d 1181 (6th Cir. 1985); Ager v. Jane C. Stormont Hospital & Training School for Nurses, 622 F.2d 496 (10th Cir. 1980); Latrobe Steel Co. v. United Steel Workers of America, 545 F.2d 1336 (3rd Cir. 1976); Norman Bridge Drug Co. v. Banner, 529 F.2d 822 (5th Cir. 1976). These do not support its holding.

precedents cited do not support the Sixth Circuit's determination that a lawfully issued, final and otherwise valid permanent injunction becomes invalid per se upon a post-judgment change in the law upon which it was based.

In the instant case the legally correcty result was reached by the District Court which recognized the continuing force and effect of its 1971 final permanent injunction, notwithstanding the post-judgment change in the federal AFDC statute, and which granted petitioners' motion to show cause. That result is consistent with this Court's approach. It also is consistent with the approach taken by other lower courts. E.g., Dowell by Dowell v. Board of Ed. of Oklahoma, 795 F.2d 1516, 1521-22 (10th Cir. 1986); Fortin v. Commissioner of

Mass. Dept. of Public Welfare, 692 F.2d 790 (1st Cir. 1982); Halderman v. Pennhurst State School & Hospital, 673 F.2d 628, 636-639 (3rd Cir. 1982), reh'g. denied Mar. 23, 1982, cert. denied, 465 U.S. 1038 (1984); Class v. Nortin, 507 F.2d 1058, 1059-60 (2nd Cir. 1974); Duracell, Inc. v. Global Imports, Inc., 660 F. Supp. 690, 692-694 (S.D.N.Y. 1987). The judgment and opinion of the Sixth Circuit to the contrary are in error.

III.

A court may, in civil contempt proceedings, compensate parties protected by a lawfully issued final permanent injunction for violation of their rights under it which occur between the time there is a post-judgment change in a statute upon which the injunction was based and the time it is prospectively vacated in judicial proceedings. The Sixth Circuit erred in its decision to the contrary.

Having granted petitioners' motion to

show cause, the District Court ordered respondent Barry to restore to members of petitioners' class the AFDC benefits to which they were entitled under the 1971 permanent injunction. 6/ This included benefits reduced or terminated in violation of the injunction. Respondent was ordered to restore benefits lost since October 1, 1984, the effective date of her resumption of the prohibited AFDC eligibility determination practice.7/ The Sixth Circuit, however, determined

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6/ The exact number of class members who are entitled to restored AFDC benefits is yet to be determined. However, it is likely that there are hundreds.

7/ The period during which respondent Barry was in contempt of the permanent injunction (the period for which she is obligated to restore lost AFDC benefits) began October 1, 1984, and ended October 1, 1986, the date on which the District Court stayed her obligation to comply with the injunction pending appeal.

that petitioners were not entitled to these compensatory damages because they were not entitled to AFDC benefits under the federal AFDC statute as changed by the 1984 DEFRA, notwithstanding their entitlement under the injunction.

The Sixth Circuit has seriously and incorrectly limited the right to compensatory damages in civil contempt proceedings. It has here denied the right to damages for violations of rights under a final injunction which was lawfully issued by a court with jurisdiction. Its decision misapprehends both the source of the right to compensatory damages and the reasons damages are denied in those cases which are subject to the narrow civil contempt exception, discussed supra. Further, its decision incorrectly permits the

relitigation of rights already fully adjudicated.

The Sixth Circuit incorrectly identified the federal AFDC statute changed by the 1984 DEFRA as the source of petitioners' right to compensatory damages. But, the source of the right to compensatory damages is the injunction in which rights have been adjudicated and fixed, subject to prospective modification. The rights once fixed in a lawfully issued injunction are no longer dependent upon statute or on common law, or any change in them. McComb, 336 U.S. at 191, 193; Maggio, 333 U.S. at 68; United Mine Workers, 330 U.S. at 303; Gompers, 221 U.S. at 441, 448-449; Dowell, 795 F.2d at 1521; Latrobe, 545 F.2d at 1343-1346.

The twin purposes of civil contempt, then, are to enable the court to enforce

compliance with its lawful final order and to compensate parties whose rights adjudicated under it have been violated. The compensatory purpose provides a remedy by way of damages for violations of adjudicated rights. United Mine Workers, 330 U.S. at 304; Worden, 121 U.S. 14; Latrobe, 545 F.2d at 1345-46. Proof of the violation of the order thus entitles the protected party to compensation for the violation of rights embodied in the order. In this respect, civil contempt proceedings for compensatory damages are in the nature of private actions for damages, but with rights having been fixed by the injunction, not by a statute or common law. Because the injunction was the source of petitioners' right to damages, enforcing the injunction does not create rights, as

the Sixth Circuit suggested. Instead, it enforces rights long since adjudicated.

The rule relied on by the Sixth Circuit, that the right to remedial relief falls with an invalid injunction, does not support its determination here. The reason there is no right to compensatory damages for violation of an erroneously issued injunction or for violation of one issued by a court without jurisdiction, is that the party ostensibly protected was not entitled to the order in the first place. United Mine Workers, 330 U.S. at 304; Worden, 121 U.S. 14; Latrobe, 545 F.2d at 1346. But that sound logic is inapplicable where, as here, the protected party was entitled to the order. That logic dictates that parties protected by a lawfully issued final

permanent injunction may be awarded compensatory damages because such parties were entitled to the injunction in the first instance and continue to be entitled until the injunction is vacated in judicial proceedings. The vacation of the injunction relieves the enjoined party of the duty to continue to comply with the executory aspects of the injunction but it does not deprive the protected parties of their ability to be compensated for violations of rights which have already accrued under the injunction.

Finally, denying parties the ability to obtain compensatory damages for violations of their rights under lawfully issued final injunctions is not consistent with the doctrines of res judicata and stare decisis, discussed

supra. These principles require that there be a remedy for rights once properly fixed. To deny that right, as the Sixth Circuit has done, is to make those principles meaningless for the court and for the parties; rights once lawfully fixed become unfixed and subject to relitigation in the context of the civil contempt action.

In support of its determination, the Sixth Circuit relied on footnote 12 in this Court's opinion in Gilliard, 107 S.Ct. at 3015. The reliance is misplaced. In Gilliard, this Court did not purport to address the authority of the lower court to award compensatory damages in a civil contempt proceeding; it was not a contempt case.

In the instant case the legally correct result was reached by the

District Court which awarded compensatory civil contempt damages to petitioners for the violation of rights adjudicated by, fixed in and accrued under the 1971 final permanent injunction. The judgment and opinion of the Sixth Circuit to the contrary are in error.

CONCLUSION

For these reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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